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12
13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

15 In re
16 PG&E CORPORATION,
17 and,
18 PACIFIC GAS & ELECTRIC COMPANY,
19 Debtors.

20 Affects:

- 21 ☐ PG&E Corporation
22 ☐ Pacific Gas & Electric Company
23 ☒ Both Debtors

24 * All papers shall be filed in Lead Case,
No. 19-30088 (DM).

Case No. 19-30088 (DM)

Chapter 11

(Lead Case Jointly Administered)

RESPONSE TO MOTION OF THE AD
HOC COMMITTEE OF UNSECURED
NOTEHOLDERS TO TERMINATE THE
DEBTOR'S EXCLUSIVE PERIODS

[Docket No. 2741]

Hearing:

Date: August 13, 2019

Time: 9:30 a.m.

Ctrm; 17, 16th Floor

Place: United States Bankruptcy Court
San Francisco, CA 94102

25 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
26 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND ALL INTERESTED
27 PARTIES:
28

1 The Singleton Law Firm (“SLF”) and Marshack Hays LLP, together with several other
2 firms, represent approximately 5,200 victims of the fires started by PG&E in 2015 (“Butte Fire”),
3 2017 (the twenty fires generally referred to as the “North Bay” and “Wind Complex Fires”) and
4 2018 (“Camp Fire”).¹ The SLF Claimants submit this response (“Response”) to the Motion of the Ad
5 Hoc Committee of Senior Unsecured Noteholders (“Ad Hoc Committee”) to Terminate the Debtors’
6 Exclusive Period (“Exclusivity Motion”), filed on June 25, 2019, as Docket No. 2741.

7 **I. Summary of Argument**

8 The Motion seeks to terminate the exclusivity period for filing and pursuing confirmation of
9 a chapter 11 plan. As Debtors have neither proposed nor made significant strides towards a plan of
10 reorganization, terminating the exclusivity period will function to afford other parties the
11 opportunity to offer a plan. Terminating exclusivity will, in fact, help move the case forward so
12 Debtors have a fighting change of exiting bankruptcy before June 30, 2020 in order to participate in
13 the new wildfire recovery fund proposed by the California legislature (“WildFire Recovery Fund”).
14 All parties, including the Ad Hoc Committee, should be allowed to expedite the plan confirmation
15 process by proposing their own plans that can finally move this case to a point of confirmation
16 where all other indications point to unnecessary delay by Debtor.

17 **II. Procedural Background**

18 Since, the Debtors continue to operate their businesses and manage their properties as debtors
19 in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108 of. The Debtors’ Chapter 11 Cases are being
20 jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of
21 Bankruptcy Procedure (“FRBP”). On February 12, 2019, the United States Trustee (“U.S. Trustee”)
22 appointed an Official Committee of Unsecured Creditors (“Creditors Committee”). A torts claimants
23 committee has also been formed (“TCC”).

24 Notably, none of the SLF Claimants are members of the TCC.

27 ¹ The claimants are jointly referred to as the “SLF Claimants.”

On June 25, 2019, as Dk No. 2741, the Ad Hoc Committee filed the instant Motion seeking to terminate Debtors exclusivity. In response, SLF Claimants file this instant response in support of the Motion.

III. Legal Argument

A. Debtors Have Made No Real Progress Towards Reorganization and Have Not Demonstrated Reasonable Prospects for Filing a Viable Plan

Section² 1121 provides, the bankruptcy court “may for cause reduce or increase the 120 day period” upon the request of a party in interest and after notice and a hearing. 11 U.S.C. § 1121(d)(1). The determination of whether cause exists to warrant an extension of the statutory time periods is fact specific. *In re Henry Mayo Newhall Mem. Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (citing *In re Dow Corning*, 208 B.R. 661, 670 (Bankr. E.D. Mich 1997)) (emphasis added). In determining any adjustment to exclusivity, a “transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution.” *In re Henry Mayo Newhall Mem. Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (quoting *In re Dow Corning*, 208 B.R. 661, 670 (Bankr. E.D. Mich 1997)).

Courts have enumerated the following factors to be considered in determining whether cause exists to warrant an extension: (1) the size and complexity of the case; (2) the necessity of sufficient time to negotiate and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) whether the debtor is paying its debts as they come due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiating with creditors; (7) the length of time the case has been pending; (8) whether the debtor is seeking the extension to pressure creditors; and (9) whether unresolved contingencies exist. *Dow Corning*, 208 B.R. at 664-665; see also *Henry Mayo Newhall Mem. Hosp.*, 282 B.R. at 452 (citing the *Dow Corning* factors).

² Unless otherwise indicated, all Chapter and Section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

1 Here, Debtors have not shown cause to warrant an extension of the exclusivity period.
2 Instead, cause has been shown to *terminate* the exclusivity period. As an initial matter, Debtors have
3 not proposed a plan up to date. Although SLF Fire Victim Claimants do not necessarily support the
4 proposed Term Sheet by the Ad Hoc Committee as being the “best path forward,” it is at least a step
5 in the right direction with respect to what has been sluggish movement by the Debtors. Mot., 6:4.
6 SLF Fire Victim Claimants shall highlight some of the Dow Corning Factor that when considered
7 are particularly worrisome and demonstrate cause for which the Motion should be granted.

8 i. Whether the Case is Particularly Large or Complex

9 No one will deny that Debtors’ case is complex. But complexity should not give way to
10 efficiency especially considering the rapidly approaching deadline to participate in the WildFire
11 Recovery Fund. At the previous Exclusivity Hearing, this court stated that it would entertain motions
12 to terminate exclusivity. Although Debtors did not take this cue to propose a plan, at least one other
13 party did actively come up with a credible plan. Simply stated, Debtors were allowed to continue in
14 exclusivity but a confirmable plan from Debtors is no closer today than it was in May.

15 ii. Debtors Have Not Filed A Viable Plan/ Existence of Good Faith Progress to
16 Reorganization

17 Debtor has not filed a plan. Moreover, Debtor has come no closer to filing a plan as most
18 time has been spent overhauling the board of directors. At minimum, terminating exclusivity will
19 motivate Debtor to work towards proposing a plan in light of other parties’ proposals for resolution.

20 iii. Debtors Have Not Made Meaningful Progress In Negotiating With Creditors

21 In various pleadings filed by the Ad Hoc Committee and the TCC, parties have brought it to
22 the Court’s attention that Debtor is not actively communicating³ with its creditors on a viable
23 proposal of how to exit bankruptcy in a prompt fashion. Surely, Debtors would have at least spoken
24 with the Ad Hoc Committee who is willing to put up the necessary funds towards moving this case
25 towards resolution. Yet that is exactly what has not happened. Moreover, rather than speak with the
26 _____

27 ³ See, e.g. Mot., 11:1-4.
28

1 TCC and SLF Claimants about individualized resolution on an expedited matter, Debtors instead
2 propose an estimation motion as a way to 'bootstrap' a cap on the funds available to compensate
3 victims all the while doing an end around due process. Plainly put, other than settling the wildfire
4 claims of 18 local public entities, Debtors have done little to nothing to move these cases forward.

5 **IV. Conclusion**

6 In this case, the foregoing factors⁴ are decidedly in favor of terminating the Debtor's
7 exclusivity period and allow parties to propose plans thus fostering forward movement. Granting the
8 Motion will not stop the Debtors from pursuing their own plan, but it will open the playing field for
9 other parties, like the Ad Hoc Committee. SLF Claimants respectfully requests, the Motion be
10 granted.

11
12 Dated: August 7, 2019

MARSHACK HAYS LLP

13 By: 

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15 DAVID A. WOOD
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Attorneys for SINGLETON LAW FIRM
FIRE VICTIM CLAIMANTS

17 Dated: August 7, 2019

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18
19 By: 

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27 ⁴ For brevity, SLF Claimants only address the factors it feels weigh in favor of terminating
28 exclusivity and granting the Motion.